

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**CLIFFORD R. RAYBURN,**

**Plaintiff,**

**vs.**

**DANNY POTTER,**

**Defendant.**

**8:23CV310**

**ORDER**

This matter is before the Court on its own motion after review of the docket.

On December 4, 2023, the Court entered a Memorandum and Order permitting Plaintiff's claims to proceed to service of process against Danny Potter, a Deputy U.S. Marshal, in his individual capacity. (Filing No. 11). The Court instructed the Clerk of Court to complete a summons form and a USM-285 form for Defendant Potter using an address obtained from the U.S. Marshals Service for such deputy, and ordered the defendant to be served by the U.S. Marshal Service pursuant to Federal Rule of Civil Procedure 4(e). The Clerk of Court completed the forms and the U.S. Marshals served Defendant Potter as directed. (Filing No. 14).

However, Defendant Potter is a Deputy U.S. Marshal being sued in his individual capacity for actions taken in connection with his role as a U.S. Marshal. See Filing No. 6. Therefore, service of process must conform with Rule (4)(i)(3) of the Federal Rules of Civil Procedure. See Fed. R. Civ. P. 4(i)(3) (instructing how "to serve a United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf (whether or not the officer or employee is also sued in an official capacity)"). Rule 4(i)(3) requires a plaintiff to "serve the United States and also serve the officer or employee under Rule 4(e) . . ." The Court's Memorandum and Order only directed service to be accomplished upon Defendant Potter under Rule 4(e), but did not direct service to be made upon the United States.

To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought—or to an assistant United States

attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk—or

(ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

Fed. R. Civ. P. 4(i)(1). Accordingly,

**IT IS ORDERED:**

1. For service of process on the United States, the Clerk of Court is directed to complete the summons forms and USM-285 forms for the following addresses:

United States Attorney - District of Nebraska  
1620 Dodge Street, #1400  
Omaha, NE 68102

Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

2. The Clerk of Court shall then forward the summons and USM-285 form together with a copy of the Amended Complaint (Filing No. 6), a copy of the Court's October 17, 2023, Memorandum and Order on initial review (Filing No. 10), a copy of the Court's December 4, 2023, Memorandum and Order (Filing No. 11), and a copy of this Order to the Marshals Service. The Marshals Service shall serve the United States by registered or certified mail at the addresses appearing above in this paragraph. See Federal Rule of Civil Procedure 4(i)(1).

3. The United States Marshal shall serve all process in this case without prepayment of fees from Plaintiff.

4. Pursuant to the Court's previous order, Plaintiff shall have until **March 4, 2024**, to complete service of process.

Dated this 3<sup>rd</sup> day of January, 2024.

BY THE COURT:

s/Michael D. Nelson  
United States Magistrate Judge